

## Silence of Witness Clears Lewis on One Libel Count

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Staff Reporter

ELLICOTT CITY, Md., June 14.—Half of the case against Radio Commentator Fulton Lewis, Jr. collapsed today when he was acquitted of one count of criminal libel.

In Howard County Circuit Court, Judge James Clark ordered a 12-man jury to clear Lewis after a key prosecution witness invoked the Fifth Amendment and refused to testify.

Lewis still faces one more criminal libel charge if prosecutors decide they can successfully bring it to trial June 30 without the crucial witness.

It was the fourth criminal libel case in Maryland history, court officials said, and the first since 1908.

Today's development added one more twist to the surprise-packed Lewis case. It was touched off last year by the radio commentator's one-man crusade against juvenile gambling and drinking in St. Mary's County, where he owns an estate.

In today's trial, Lewis was charged with criminally libeling Maryland State Sen. Paul J. Bailey (R-St. Mary's) in a letter printed July 23, 1953, in The Enterprise, a St. Mary's County weekly newspaper.

Joseph A. Mattingly, St. Mary's State's Attorney, launched the State's case by putting Sheridan Fahnestock, publisher of the newspaper, on the witness stand. He asked Fahnestock about his occupation.

"I believe I will have to use my rights under the Fifth Amendment and refuse to testify," said Fahnestock.

Time after time, Mattingly tried to get Fahnestock to identify the letter as having been written and sent by Lewis. Each time, Roger Robb, a Lewis attorney, objected.

"I have no doubt about it, Mr. Mattingly," said Judge Clark after the fifth try. "If Mr. Lewis is guilty of libel, this man (Fahnestock) is too. You can't make this man incriminate himself."

"The State claims surprise at this witness and requests a recess," said Mattingly. Judge Clark ordered a one-hour recess.

Afterwards, Fahnestock took the stand again and announced flatly: "I will answer no ques-

tions pertaining to this publication."

"I offer Mr. Fahnestock immunity from prosecution and ask the court to instruct him to testify," Mattingly said.

"You can't do that in a case of this sort," the judge declared.

"The state had no idea that the witness before us would take the position he has," said Mattingly. He asked Judge Clark to allow the prosecution "time to proceed on another line."

"I'm not going to stop this trial—the state should have come prepared to try this case," the judge replied.

"I see no point in going on," Mattingly said. The judge directed a verdict of acquittal.

That left on charge standing against Lewis—that he libeled Senator Bailey and two other officials in another letter published in The Enterprise—this one on July 9, 1953.

Judge Clark gave Mattingly until Thursday to decide whether or not he can prosecute this count. If he decides to do so, trial will be held June 30.

It all started when a St. Mary's County grand jury investigated Lewis' charges last year, then turned around and indicted the commentator on three counts of libel and one count of perjury.

Lewis got his trial shifted from St. Mary's to Howard County. In a pretrial hearing last month, Judge Clark dismissed the perjury charge and one of the libel counts.

In an opening statement today, prosecutors said they would prove Lewis libeled Sen. Bailey because the commentator failed to get appointed to the St. Mary's County Board of Education.